c. The Commission Should Modify its Definition of Unbundled Interoffice Transport to Include Dark Fiber Transport

ALTS believes that the Commission should follow the lead of nearly a dozen states and require unbundled access to "dark fiber" transport.[105] ALTS acknowledges that the Commission concluded that it did not have sufficient information to include dark fiber transport on its national list in 1996.[106] However, based on state commissions' "best practices," it is appropriate for the Commission to reassess that decision.

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105 *Petition of MCI for Arbitration Under the Telecommunications Act of 1996*, Docket No. 6865-U (GA P.S.C. Dec. 17, 1996); *MCI Telecommunications Corporation: Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Central Telephone Company of Illinois*, 96-AB-009 (I.C.C. Feb. 5, 1997); *MCI Telecomms. Corp. v. BellSouth Telecomms., Inc.*, No. Civ.A. 97-76, 1999 WL 166183 (E.D. Ky. Mar. 11, 1999); *Consolidated Petitions of New England Telephone and Telegraph d/b/a Bell Atlantic-Massachusetts et al.*, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 4-J (Mass. D.P.U./D.T.E. Mar. 19, 1999); *Consolidated Petitions of AT&T Communications of the Midwest, Inc.; MCImetro Access Transmission Services, Inc.; and MFS Communications Company for Arbitration with US West Communications, Inc. Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996*, Docket No. P-442, 421/M-96-885 (Minn. P.U.C. Mar. 17, 1997); *AT&T Communications of the Southwest, Inc.'s Petition for Arbitration Pursuant to Sec 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company*, Case No. TO-97-40 (MO P.S.C. Dec. 11, 1996); *Petition of MCI Telecommunication Corporation for Arbitration Pursuant to sec. 252(b) of the Telecommunications Act of 1996 to establish an Interconnection Agreement with Ohio Bell Telephone Company d/b/a Ameritech Ohio*, Case No. 96-888-TP-ARB (OH P.U.C. Feb. 20, 1997); *Petition of AT&T for Arbitration under the Telecommunications Act of 1996*, Docket No. 96-01152 (TN R.A. Jan. 23, 1997); *Petition of Waller Creek Communications, Inc., for Arbitration with Southwestern Bell Telephone Company*, Docket No. 17922 (TX P.U.C. Dec. 29, 1997); *Petition of Electric Lightwave for Arbitration Pursuant to Sec. 252(h) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with GTE Northwest Inc.*, Docket No. UT-901029 (WA U.T.C. Mar. 13, 1992).

106 *Local Competition First Report and Order*, ¶ 450.

As an initial matter, it is important to note that some states define dark fiber as a "service" while others define it as a "facility." This definitional difference is irrelevant, however, because dark fiber qualifies as a "network element" under the definition supplied by Congress in Section 3(29).[107] There is no requirement that network elements be "telecommunications services;" rather, the definition indicates only that the equipment be of the type that is "used in the provision of a telecommunications service."[108] Unlit or dark fiber is clearly the type of equipment that can be used in provisioning a telecommunications service. Otherwise, ILECs would not own it and CLECs would not want unbundled access to it. As a "network element," dark fiber is subject to unbundling under Section 251(c)(3), provided the Section 251(d)(2) standard is met.

Under Section 251(d)(2), the "impair" test applies, as "dark fiber" does not qualify as a "proprietary" network element. For the same reasons described with respect to "lit" interoffice transport above, requesting carriers' ability to compete materially has been and will continue to be diminished if unbundling is not required. Further, there are no legal or policy reasons that justify segregating these transport facilities from others in the ILECs' ubiquitous transport network. Indeed, the public interest would be served well by providing ILECs a return on, and by putting to use, this idle plant.

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107 47 U.S.C. § 153(29).

108 *Id.*

4. The Commission Must Continue to Require Unbundled Access to Signaling Networks and Call-related Databases

As the Commission recognized in its *Local Competition First Report and Order,* nondiscriminatory access to signaling networks and call-related databases is essential to the effective interconnection of ILEC and CLEC networks.[109] Simply put, facilities-based local competition will not work without unbundled access to signaling and call-related databases.

a. SS7 Signaling and Call-Related Databases Meet the Section 251(d)(2) Standard for Unbundling

In its first attempt at applying the Section 251(d)(2) standard to signaling and call-related databases, the Commission noted that SS7 signaling and access to call-related databases is based on Telcordia (Bellcore) standards and is thus non-proprietary.[110] For the same reason, SS7 signaling and access to call-related databases remains nonproprietary under ALTS' proposed standard. Access to Service Management Systems ("SMS") also is nonproprietary under the ALTS standard, because unbundled access does not reveal proprietary processes or methods.[111] Thus, unbundled access to SS7 signaling, call-related databases and the SMS needed to effectively use call-related databases must be evaluated under the "impair" standard in Section 251(d)(2)(B).[112]

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109 *Local Competition First Report and Order,* ¶ 478 (recognizing that such access is required under Section 251(c)(2)).

110 *Id.,* ¶¶ 481, 489.

111 *See id.,* ¶ 498.

112 In the *Local Competition First Report and Order,* the Commission concluded that signaling, call-related databases and SMS each met the "impair" test, as then defined by the Commission. *Id.,* ¶¶ 482, 491, and 499. The same conclusion must be reached under ALTS' proposed interpretation of the standard.

Over the past three years, no comparable alternatives have developed for ILEC signaling or call-related databases. Although a wholesale market for SS7 signaling shows signs of developing, alternative sources are not yet capable of delivering service without a material loss in quality. Indeed, ALTS members report that alternatives to ILEC SS7 generally have not been reliable. With respect to call-related databases and SMS, there simply are no substitutes. Thus, with respect to SS7 signaling, call-related databases, and SMS, it is clear that competitors' ability to compete materially would be diminished in the absence of an unbundling requirement. Beyond the impair test, it also is clear that in enacting its prescription for local competition, "Congress contemplated the unbundling of signaling systems" and call-related databases as network elements.[113] Again, without unbundled access, calls would not go through and competitors would not have a meaningful opportunity to compete.

5. The Commission Must Continue to Require Unbundled Access to Operations Support Systems

Unbundled access to OSS is a precondition for access to all other UNEs. The Commission's Section 271 decisions and the state commissions' adoption of independent third party testing confirms this conclusion. Indeed, the success of local competition and each method of entry rests heavily on the Commission's retention of an OSS unbundling requirement.

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113 *Id.* ¶ 479; *see also* ¶ 478; Statement of Senator Pressler, 141 Cong. Rec. S8163 (June 12, 1995) (noting that "access to signaling and databases [is] important if you are going to compete and get into the market.").

a. OSS Meets the Section 251(d)(2) Standard for Unbundling

Under the standard proposed by ALTS, OSS does not qualify as "proprietary" for the purposes of Section 251(d)(2). Although some ILECs have developed what they claim to be proprietary interfaces, unbundled access to those interfaces does not reveal any proprietary aspect subject to protection under the nation's intellectual property laws. Thus, ALTS submits that OSS unbundling must be evaluated under the "impair" test.[114]

There can be no question that a requesting carrier's ability to compete would be diminished materially without unbundled access to OSS. The Commission's *Local Competition First Report and Order* observations on the paramount importance of unbundled access to OSS remain no less valid today and have been affirmed by the Commission repeatedly in its orders over the past three years. Specifically, the Commission found that:

> Without access to review, *inter alia,* available telephone numbers, service interval information, and maintenance histories, competing carriers would operate at a significant disadvantage with respect to the incumbent. Other information, such as the facilities and services assigned to a particular customer, is necessary to a competing carrier's ability to provision and offer competing services to incumbent LEC customers. Finally, if competing carriers are unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the same time and manner that the incumbent can for itself, competing carriers will be severely disadvantaged, if not precluded altogether, from fairly competing. Thus

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114 In its first application of the Section 251(d)(2) standard, the Commission applied both the "necessary" and "impair" tests and concluded that unbundled access to OSS was "essential." Although different standards must be applied on remand, the Commission's original conclusion aptly suggests that OSS unbundling is required under any possible interpretation of the Section 251(d)(2) standards. *Local Competition First Report and Order,* ¶¶ 521-22.

> providing nondiscriminatory access to these support systems functions, which would include access to the information such systems contain, is vital to creating opportunities for meaningful competition.[115]

This analysis demonstrates that the materiality standard incorporated into ALTS' proposed impair test is more than satisfied. ILEC OSS cannot be replaced by self-provisioning or by alternative vendors. For local competition to take hold and to ensure that UNE-based entry remains viable, the Commission must retain its OSS unbundling requirement.[116]

b. The Commission Must Clarify that the ILECs' OSS Unbundling Obligation Includes Access to Loop Qualification Information Necessary to the Provisioning of xDSL and Other Advanced Services

In order to promote the deployment of advanced services, such as xDSL, ALTS believes that it is essential that the Commission explicitly affirm that the ILECs' OSS unbundling obligations include an obligation to make readily available "loop qualification information." Loop qualification information is information about the physical attributes of loop plant that enables carriers – ILECs and CLECs alike – to determine whether the loop is capable of supporting or "qualifies" for xDSL and other advanced technologies. If competitors are going to be able to compete effectively, they need to have access to such information on the same terms as the ILECs.

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115 *Id.*, ¶ 518.

116 In affirming its OSS UNE, ALTS believes that the Commission also should provide guidance concerning ILEC recovery of costs associated with OSS. In some states, ILECs appear to be double recovering by charging for OSS separately and as part of individual UNEs.

The Commission already has established that ILECs must provide nondiscriminatory access to OSS for all loops.[117] It also has determined that "an incumbent LEC does not meet the [OSS] nondiscrimination requirement if it has the capability electronically to identify xDSL–capable loops, either on an individual basis or for an entire central office, while competing providers are relegated to a slower and more cumbersome process to obtain that information."[118] However, in light of the Commission's current review of its unbundling rules, ALTS believes that the Commission should affirm and clarify that nondiscriminatory access to loop information regarding physical specifications, including loop type, length, conditioning and electronics already in place, is required.

B. The Commission Must Establish New UNEs Critical to the Development of Local Competition and the Delivery of Broadband Services

In its Section 706 Petition and the *Advanced Services* proceeding that ensued, ALTS strenuously has advocated Commission clarification and modification of existing UNEs and adoption of new UNEs necessary for the continuing development of local competition and for the competitive deployment of advanced services. Above, ALTS set forth those clarifications of and definitional changes to existing UNEs that it believes are fundamental to advancing local competition for traditional voice and advanced services. In this section, ALTS proposes that the Commission adopt several new UNEs. As ALTS demonstrates below, Commission adoption of extended link, intra-multi-tenant

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117 *Advanced Services Collocation Order and NPRM*, ¶ 152, 157-158; *Local Competition First Report and Order*, ¶ 523.

118 *Advanced Services Collocation Order and NPRM*, ¶ 56.

environment ("intraMTE") wiring, data, and multiplexing UNEs will remove significant barriers to competition and will spur the development of competitive advanced service offerings.

1. The Extended Link Should Be Defined as a New UNE

The extended link, otherwise commonly referred to as the "enhanced extended link" or the "EEL," is a dedicated transmission path connecting the end user with the CLEC's voice or data switch at a CLEC point of presence. As is the case with the local loop and shared transport, an extended link UNE involves the interconnection or "combination" of several discrete UNEs to deliver a defined functionality equivalent to that employed by the ILECs in their own networks. As currently used by ILECs, and by CLECs in several states, extended links are comprised of loop, aggregation/routing, and dedicated interoffice transport. ILECs frequently use such arrangements in their own networks to deliver data traffic to their own packet switches. As the ILECs themselves have demonstrated, the extended link enables the efficient provisioning of switched services without the need to place switching equipment in each central office. Notably, extended links are the functional equivalent of special access links also regularly combined in the ILECs' own networks.

To varying degrees, CLECs also have employed extended links in their own provisioning of voice and data services. In some cases, extended links have been provisioned pursuant to interconnection agreements (*e.g.*, e.spire/BellSouth (regional) and AT&T/Bell Atlantic (New York)). In other cases, extended links have been made available by orders of various state commissions (*e.g.*, New York and Texas). In virtually no case, however, have CLECs been able to obtain extended links in a manner

that will reasonably facilitate widespread local competition for voice and data traffic. For example, because of delays and disconnects associated with bifurcated local and access ordering and provisioning procedures in SBC's Southwestern Bell service territory, e.spire has been forced to order non-cost-based and far more expensive special access instead of extended links, in order to meet customer demand. In New York, Bell Atlantic appears to have been successful in placing substantial restrictions on extended links, despite the Commission's *Local Competition First Report and Order* decision prohibiting limitations on the use of UNEs and despite the fact that, in contravention of Section 706, the New York limitations prohibit the use of extended links for data services.[119]

The record in the *Advanced Services* proceeding demonstrated overwhelming support for inclusion of the extended link in the Commission's national minimum unbundling requirements. Indeed, ALTS was joined in its support for defining an extended link UNE by a broad group of competitors including AT&T, Covad, e.spire, ICG, ICC, Intermedia, GST, MCI WorldCom, Nextlink, NorthPoint, Paradyne, Sprint, Transwire, and US Exchange.[120] In light of the Eighth Circuit's *Iowa Utilities Board*

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119 *Local Competition First Report and Order,* ¶ 292 ("incumbent LECs may not restrict the types of telecommunications services requesting carriers may offer through unbundled elements").

120 ALTS Comments, CC Docket No. 98-147, at 58, 87 (filed Sept. 25, 1998); AT&T Comments, CC Docket No. 98-147, at 69-70 (filed Sept. 25, 1998); AT&T Reply Comments, CC Docket No. 98-147, at 21, 78, 85 (filed Oct. 16, 1998); Covad Comments, CC Docket No. 98-147, at 53-54 (filed Sept. 25, 1998); e.spire Comments, CC Docket No. 98-147, at 41 (filed Sept. 25, 1998); ICG Comments CC Docket No. 98-147, at 32-33 (filed Sept. 25, 1998); Illinois Commerce Commission Comments, CC Docket No. 98-147, at 16 (filed Sept. 25, 1998); Intermedia Comments, CC Docket No. 98-147, at 58 (filed Sept. 25, 1998); GST Reply Comments, CC Docket No. 98-147, at 34 (filed Oct. 16, 1998); MCI WorldCom Comments, CC Docket No. 98-147, at 63-64 (filed Sept. 25, 1998); Nextlink Reply Comments, CC Docket No. 98-147, at 79 (filed Oct. 16, 1998);

decision, in which it erroneously barred combinations and overturned the Commission's rule requiring ILECs to provide unbundled access to combinations of UNEs, competitors argued that extended link functionality should itself be defined as a UNE. Somewhat ironically, the same Court supplied support for this approach in a separate decision affirming the Commission's functional approach to defining UNEs.[121]

ALTS maintains its support for this approach, but submits that the Commission may now accomplish the same objective by requiring ILECs to make available an extended link combination instead. As the Supreme Court made clear in its decision overturning the Eighth Circuit's *Iowa Utilities Board* decision, "[Section 251(c)(3)] assuredly contemplates that elements may be requested and provided in [discrete pieces] (which the Commission's rules do not prohibit). But it does not say, or even remotely imply, that elements must be provided only in this fashion and never in combined form."[122]

NorthPoint Comments, CC Docket No. 98-147, at 17-20 (filed Sept. 25, 1998); Paradyne Comments, CC Docket No. 98-147, at 9 (filed Sept. 25, 1998); Sprint Comments, CC Docket No. 98-147, at 33-34 (filed Sept. 25, 1998); Transwire Reply Comments, CC Docket No. 98-147, at 19-21 (filed Oct. 16, 1998); US Exchange Comments, CC Docket No. 98-147, at 10 (filed Sept. 25, 1998).

121 *Southwestern Bell v. FCC*, 153 F.3d 597 (8th Cir. 1998), *petition for cert. filed,* 67 U.S.L.W. 3561 (Feb. 26, 1999) (No. 98-1381) (*"Shared Transport Decision"*). At that time, ALTS and others also supported their request for Commission action to define an extended link UNE based on the fact that an extended link does not provide an end-to-end service and, thus, cannot be challenged on the basis that it blurs the line between cost-based unbundling and avoided cost resale. *E.g.,* Ex Parte Presentation of the Association for Local Telecommunications Services, e.spire Communications, Inc., Intermedia Communications Inc., Metromedia Fiber Network Services, Inc, and MGC Communications, Inc., CC Docket No. 98-147 (Jan. 20, 1999).

122 *AT&T,* 119 S.Ct. at 737.

Provided that competitors are able to obtain unrestricted access to extended link functionality, ALTS does not necessarily have a preference for one approach over the other. Thus, ALTS proposes that the Commission define the extended link as a separate UNE in its national minimum unbundling requirements. Below, ALTS also proposes that the Commission order combinations of a loop, multiplexing/aggregation/routing equipment and transport. Again, ALTS supports Commission adoption of either approach.

Although ALTS elsewhere in these comments demonstrates that unbundling of the loop, multiplexing/aggregation/routing, and transport UNEs that would comprise an extended link UNE is consistent with the statutory unbundling standards of Section 251(c)(3) and (d)(2), ALTS offers the following Section 251 assessment with regard to the extended link as an integrated UNE. As an initial matter, it is well settled that providing requesting carriers unbundled access to extended links is technically feasible. As indicated above, BellSouth, Bell Atlantic and SBC already provide unbundled access to extended links pursuant to the terms of various interconnection agreements and state commission orders.

Requiring unbundled access to extended links also is consistent with the unbundling standards set forth in Section 251(d)(2). Since extended links are not "proprietary," under Section 251(d)(2)(A) and as defined by ALTS, unbundling is subject to the "impair" standard of Section 251(d)(2)(B). Applying the impair standard, it is quite clear that competitors' ability to compete materially will be impaired, if they are unable to obtain unbundled access to extended links. As is the case with the loop and other bottleneck facilities, there is no competitive wholesale market from which CLECs

can obtain access to substitutes for extended link functionality. Thus, various factors associated with self-provisioning equivalent functionality must be assessed. Because CLECs cannot in the near term hope to approximate the ubiquity of ILEC loop plant, central offices and transport facilities, CLECs will be materially disadvantaged in terms of cost, scope of availability, and time-to-market. Without unbundled access to extended links, CLECs could be forced to collocate in every ILEC end office serving CLEC customers. In other words, if unable to obtain access to extended links, CLEC services would be restricted to customers served in end offices where CLECs can build or have built a sufficient customer base to justify the enormous capital expense involved with collocation. Unbundled extended links would help alleviate the competitive disparity created by the ILECs' ubiquitous network infrastructure, by maximizing the number of customers that can be served from a single CLEC point of presence. Accordingly, extended links substantially can reduce the cost and delays associated with collocation, while at the same time conserving scarce ILEC space for collocation in ILEC end offices. Indeed, in end offices where ILECs have reached space exhaust, extended links may provide new entrants with the only efficient means of competing.

Regardless of space availability for collocation at ILEC end offices, however, extended link unbundling clearly meets the impair standard of Section 251(d)(2). Unless ILECs are required to provide unbundled access to extended links, CLECs will be forced to collocate in every end office, materially increasing the cost of interconnection, materially limiting the scope of availability of CLEC services, and materially delaying CLECs' time-to-market. Moreover, CLECs' inability to obtain unbundled access to extended links also would contribute to unwarranted scarcity in ILEC central office space

and would force CLECs – and this Commission – to litigate extensively over the technical means of deriving unbundled local loops in cases where ILECs employ digital subscriber line and other mixed fiber/copper loop technologies. For all these reasons, the Commission should act now to add an extended link UNE to its national minimum unbundling requirements.

a. The Commission Must Ensure that Competitors Have Unrestricted Access to Extended Links

To ensure that defining an extended link UNE will have its intended effect, the Commission should preempt ILEC attempts to limit its usefulness by refusing to incorporate loops and transport capable of supporting advanced applications.[123] For example, extended links that incorporate 4-wire digital loops and fiber transport will be most useful to CLECs seeking to expand their broadband services offerings.[124] Thus, consistent with the Commission's task under Section 706, this new national minimum unbundling rule should require ILECs to offer extended links for all loop and transport types. Moreover, because the functionality defined varies depending on whether the loop component of the extended link UNE employs "home run" copper or a DLC configuration, ILEC attempts to limit access on the basis of that technology-based distinction – or any other – also should be prohibited.

Commission action also is necessary to preempt ILEC practices inconsistent with the 1996 Act and the Commission's rules and orders interpreting it. Specifically, Bell

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123 *Id.*

124 An extended link consisting of a DS1 loop, appropriate concentration/routing, and DS1 transport can be used to provide dedicated voice service or can be used purely for data transmission.

Atlantic and SBC have successfully convinced the New York and Texas Commissions to allow them to restrict extended link offerings in contravention of several sections of the Act and numerous Commission findings. In New York, Bell Atlantic restricts access to extended links so that DS1 level extended links can only be used for predominantly local voice traffic.[125] In Texas, SBC apparently has persuaded the Public Utility Commission to prohibit migration of special access circuits to extended links.[126] Clearly, the practices of both ILECs run counter to a number of conclusions reached by the Commission in its *Local Competition First Report and Order* that make clear that service based restrictions violate the Communications Act.

In its *First Report and Order*, the Commission expressly made clear that UNEs are available to CLECs for the provision of *any* "telecommunications service." Indeed, the Commission explicitly found that "the only limitation that the statute imposes on the definition of a network element is that it must be 'used in the provision of a telecommunications service.'"[127] This conclusion is mirrored in Commission Rule 309(a) which states that "[a]n incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier

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125 *Order Directing Tariff Revisions,* Case 98-C-0690 et al. (NY P.S.C. Mar. 24, 1999) (approving amendments to Bell Atlantic's PSC Tariff No. 916).

126 Memorandum from Chairman Pat Wood, III to Commissioners Judy Walsh and Brett Perlman, Texas Public Utility Project No. 16251 (Apr. 28, 1999) (Section 271 Collaborative).

127 *Id.*, ¶ 261 (citations omitted).

intends."[128] Section 153(46) of the Act defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, *regardless of the facilities used.*"[129] For these reasons, the Bell Atlantic and SBC restrictions on requesting carriers' use of extended links are unlawful.

The restrictions imposed by Bell Atlantic and SBC not only run afoul of Section 251 and the Commission's rules and decisions implementing it, they also contravene the Commission's *Advanced Services Order* and the general advanced services mandate in Section 706. Notably, in its *Advanced Services Order*, the Commission found that the pro-competitive provisions of the Act, including Sections 251 and 706:

> [A]pply equally to advanced services and to circuit-switched voice services. Congress made clear that the 1996 Act is technologically neutral and is designed to ensure competition in all telecommunications markets. We therefore conclude that incumbent LECs are subject to section 251(c) in their provision of advanced services.[130]

Bell Atlantic's restrictions foreclose the provision of data services over extended links, and thereby discriminate against competitive providers of data services, favor circuit-switch-based applications over packet-switched applications, and thus contradict the Commission's interpretation of the Act and sound public policy.

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128 47 C.F.R. § 51.309(a).

129 47 U.S.C. § 153(46) (*emphasis added*).

130 *Advanced Services Order*, ¶ 11.

2. IntraMTE Wiring Should Be Defined as a New UNE

ALTS applauds the Commission for recognizing the importance of intraMTE wiring in the *FNPRM*, and strongly supports the adoption of ILEC-owned intraMTE wiring as a new UNE.[131] Presently, access to intraMTE wiring represents one of the most formidable barriers to new entrants seeking to compete for customers in business and residential MTEs. The convoluted nature of inside wire ownership rules and difficulties engendered by dealing with individual landlords contribute to this problem.[132] Admittedly, adopting an intraMTE wiring UNE would address only those barriers caused by ILEC ownership of intraMTE wiring. Nevertheless, the Commission should not hesitate to address obstacles associated with the ILECs' bottleneck control over the "last hundred feet." Adding intraMTE wiring to the Commission's national minimum unbundling requirements is the best way of removing such obstacles and encouraging facilities-based competition for customers in MTEs.

ALTS' proposed unbundling of intraMTE wiring, such as vertical and horizontal riser cables, meets the unbundling standards of Section 251. The fact that several ILECs, including BellSouth, U S West and Bell Atlantic already provide access to intraMTE wiring demonstrates that unbundling is technically feasible.[133] It also suggests that the

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131 *FNPRM*, ¶ 33.

132 Whether the ILEC owns intraMTE wiring depends on when the building was constructed, standard industry practices (which can vary by state and ILEC), and whether there are supervening state regulations.

133 BellSouth makes intraMTE wiring available on an unbundled basis through interconnection agreements it has entered into with CLECs in Georgia, Florida, Kentucky and Tennessee; U S West is required to provide unbundled access to

Commission should incorporate this ILEC "best practice" into its national minimum unbundling standards.

IntraMTE wiring also meets the "impair" standard of Section 251(d)(2)(B).[134] The cost and complexity of rewiring existing buildings can add thousands of dollars to the cost of serving customers in a MTE.[135] Unlike ILECs who typically have been given free access to install intraMTE wiring facilities during initial construction of buildings, CLECs, if forced to duplicate this plant, must deal with myriad hurdles, both in time and money, in drilling through floors and cabling elevator shafts, during and after business hours. Just the same as with the loop and the NID, existing ILEC intraMTE wiring provides incumbents with material cost and time-to-service advantages. Without unbundled access, CLECs may have to forego MTE entry altogether, or do so only in states that have recognized the importance of proving access to the *entire* ILEC-owned link to end users. Thus, consistent with the pro-competitive goals of the 1996 Act and the specific unbundling standards of Section 251, the Commission should add ILEC-owned intraMTE wiring to its national minimum list of unbundling requirements.

To facilitate the unbundling of intraMTE wiring and to expedite competitive entry, ALTS submits that the Commission also must require ILECs to make readily available on their websites, reports indicating the buildings in which they own intraMTE

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intraMTE wiring in Nebraska; and Bell Atlantic is required to provide unbundled access to riser cables in New York.

134 IntraMTE wiring is not "proprietary," as defined by ALTS, and thus, the "necessary " standard of Section 251(d)(2)(A) does not apply.

135 Self-provisioning is the only alternative to ILEC unbundling. Other non-ILEC alternatives do not exist.

wiring.[136] The Commission also should make clear that CLECs must have access to unbundled intraMTE wiring without the discriminatory costs and delays imposed by ILEC-imposed requirements that their own personnel be present. Without such an explicit restriction, CLECs' ability to obtain unbundled access to intraMTE wiring at TELRIC-based rates will be rendered meaningless by the costs involved with ILEC-imposed dispatch and coordination.

3. The Commission Should Define Several New Data UNEs

Several members of ALTS have expended substantial time and resources in attempting to negotiate or arbitrate interconnection arrangements for data services such as frame relay, and have met with only partial success. First, because there currently are no data UNEs, interconnection of CLEC frame relay and other data networks with ILEC data networks only can be established through lengthy negotiations or contested arbitrations. As a result, data interconnection only is available in a few states, and the terms for such interconnection vary dramatically from state to state and from ILEC to ILEC. Moreover, in some instances, data network interconnection only is permitted for jurisdictionally intrastate data traffic. This lack of ubiquity and uniformity – and, of course, the restrictions on the types of data traffic that can be provisioned over data interconnection agreements – greatly limits the utility of CLEC data networks. These experiences make clear that, consistent with the Section 251(d)(2) standards for network unbundling, and the Section 706 mandate to encourage the deployment of advanced data

136 The Commission recently adopted a similar requirement with regard to space availability for collocation in ILEC end offices. *Advanced Services Collocation Order,* ¶ 58.

services, the Commission should establish a series of UNEs specifically required for the expansion of CLEC data networks.

Data networks do not follow the same hierarchical switching structure as ILEC circuit-switched networks, in which a transmission is routed over dedicated circuits through a predetermined series of offices containing different levels of switching. Instead, a data customer is connected to a "cloud" of interconnected data switches and/or routers and transport links. At the end user's premises, the customer's data transmission is converted into multiple data packets, each of which may travel along hundreds of different paths within this "cloud" to reach the ultimate point of interconnection. In a single transmission, the data may transit multiple data switches (in the case of frame relay and ATM) or routers (in the case of Internet Protocol), which provide a variety of functions, including aggregating, hubbing, routing, and switching. In addition, in order to provide the redundancy and alternate transmission paths that allow the most efficient routing, data carriers often interconnect their networks at multiple points.

In many cases, established UNEs – as modified per ALTS' discussion in these comments – will provide the network functionality that data carriers require. This is particularly true in the case of dedicated high capacity transport at DS1, DS3 and OCn speeds; and digitally conditioned copper loops or high speed loops. In other cases, however, ILECs must unbundle functions that are unique to data networks, and new data UNEs must be established. ALTS discusses these UNEs below.

The unique UNE functions required by data carriers are necessary to provide connectivity between switching, hubbing or routing nodes on a data network. This can involve connectivity between a data switch or router that serves an end user and a data

switch or router that serves other carriers, or connectivity between data switches or routers that serve carriers. These functions typically are reflected by various elements in ILEC frame relay and ATM cell relay service tariffs, but the terminology varies dramatically from ILEC to ILEC. The functions, however, regardless of technology, are essentially the same – the establishment of a virtual circuit between ports on data switches or routers. Whether this connectivity is called a "Logical Link,"[137] "Data Link Channel Identifiers,"[138] a "Private Network Link"[139] or some other term, the ILEC provides a virtual circuit defined at a specific bit rate that connects two ports. All ILECs include this form of connection in their retail tariffs at flat monthly rates.

To translate these functions into UNEs, the Commission must order ILECs to do two things: (1) unbundle ports on their data switches or routers; and (2) provide a virtual circuit at a series of pre-defined bit rates between the ports. The virtual circuits should be available in increments of 56 or 64 kbps going up to 45 Mbps, and should be expanded to reflect higher capacities as technology makes them available. While rates for these UNEs may vary – a port on an ATM switch may have a different TELRIC than a port on an IP router; and a 56 kbps virtual circuit will have a different TELRIC than a 1.544 Mbps

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137 Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, § 14.2.2, frame relay service ("the Logical Link . . . is the permanent virtual circuit that establishes the connection from one Port . . . to another.").

138 BellSouth Telecommunications, Inc., Tariff F.C.C. No. 1, § 21.1.9 (B)(1) ("When any two DLCIs are mapped together, a PVC [Permanent Virtual Circuit] can be created.").

139 Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, § 14.5.4(A)(4) , ATM service ("The [Private Network Link] issued to provide a dedicated connection between central office based ATM CRS switches.").

circuit – these elements must be priced at TELRIC. Moreover, the Commission must ensure that CLECs fully are able to connect these UNEs to other transport and loop UNEs established as part of this proceeding, free of hidden cross-connect charges, "glue" charges, or other impediments.

ALTS submits that these data UNEs qualify for unbundling under Section 251(d)(2). Since these data UNEs do not provide a CLEC with "proprietary" information, software or hardware, the "necessary" test does not apply. Under Section 251(d)(2)(B), these data UNEs meet the impair test because a CLEC cannot terminate a transmission on its data network to a customer on the ILEC data network without either reselling the ILEC's retail service or obtaining these functions as UNEs. As ALTS discussed above, resale does not represent a viable alternative to unbundling under the impair test and, thus, these data UNEs must be made available on an unbundled basis.

Finally, as ALTS noted above, several CLECs have encountered ILEC attempts to limit the use of frame relay interconnection agreements – and proposed frame relay UNEs – to intrastate services only. Such a restriction would, of course, prohibit the use of frame relay UNEs to provide interstate service, or (under the Commission's recent finding that any dedicated line terminating to an Internet service provider is jurisdictionally interstate[140]) to provide internet service. In order to prevent unnecessary litigation over these matters, the Commission should affirmatively state that a CLEC's ability to use these data UNEs – like all UNEs – may not be restricted.

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140 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, *Declaratory Ruling,* ¶¶ 1, 18 (rel. Feb. 26, 1999).

4. Multiplexing/Aggregation/Routing Functionalities Should Be Defined as a New UNE

Multiplexing, or "muxing," aggregation, and routing (for convenience, collectively referred to herein as "multiplexing") are critical components of many of the UNE combinations that ALTS believes the Commission should require ILECs to make available. Accordingly, ALTS submits that these functionalities, too, should be defined as a UNE that ILECs must make available to requesting carriers at TELRIC prices. Establishing "multiplexing" as a UNE is necessary to eliminate disputes over access and pricing that have marred many interconnection negotiations between ILECs and CLECs. Such disputes have been generated by ILEC attempts to require DLC systems when simpler, cheaper and more efficient multiplexing equipment would suffice, and to impose non-cost-based pricing for multiplexing.

Multiplexing meets the standards for unbundling set forth in Section 251(c)(3) and (d)(2). First, it is technically feasible to unbundle central office multiplexing. Proof of this assertion can be found in the fact that many ILECs already do so, although some do so at rates that depart significantly from the Commission's cost-based pricing standards.

Multiplexing also meets the "impair" test of Section 251(d)(2)(B).[141] "Multiplexing" performs critical functions that enable ILECs and CLECs to efficiently connect network elements by converting signals, aggregating and disaggregating or routing traffic. As indicated above, multiplexing is a critical component of many of the

141 "Multiplexing" is not a "proprietary" network element, under Section 251(d)(2)(A) and as defined by ALTS. Therefore, the "necessary" standard for unbundling does not apply.

UNE combinations that the Commission should require ILECs to make available to requesting carriers. ILECs use multiplexing to combine network elements within their own networks. CLECs' ability to compete materially would be impaired if they were denied unbundled access to the same functionality at cost-based prices. For example, multiplexing is necessary for ILECs and CLECs to aggregate loops onto high capacity transport. If CLECs were unable to obtain multiplexing as a UNE, their costs would increase dramatically, and materially, as they would have to look to self-provisioning (competitive wholesale alternatives largely do not exist). Notably, self-provisioning would necessitate significant capital expenditures on equipment and collocation. CLECs, in many cases, will not have the preexisting customer base necessary to make self-provisioning a cost-effective alternative to ILEC unbundling. Delays associated with obtaining capital, equipment, collocation, and a sufficient customer base to justify self-provisioning could force CLECs to forgo offering a service and would leave end users with fewer service choices, if any, other than those offered by the incumbent. For these reasons, multiplexing meets the materiality standard incorporated in ALTS' proposed impair standard and should be added to the Commission's national minimum unbundling requirements.

C. Competitors Must Have Cost-Based Access to Combinations of UNEs Used by the ILEC in Provisioning its Own Services to Carriers and Customers

Congress and the Commission long have recognized the important role combinations would have in introducing local competition. Section 251(c)(3) provides that "[a]n incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to

provide [a] telecommunications service."[142] In its *Local Competition First Report and Order,* and in its subsequent Section 271 decisions, the Commission steadfastly has clung to its commitment to ensuring that competitors would have access to combinations to the fullest extent possible under the law. The Department of Justice, in its Section 271 Evaluations similarly has recognized the importance of UNE combinations as a tool for opening monopoly local markets to competition. Now, with the Supreme Court's reinstatement of Rule 315(b), it appears that Congress and the Commission finally will have their way.

Below, ALTS reaffirms its facilities-based members' need for combinations. To limit potential litigation and delay, ALTS identifies several combinations that must be provided consistent with Section 251(c) and Rule 315(b). To ensure full realization of the market-opening provisions of Section 251(c), ALTS requests that the Commission explicitly impose an obligation on ILECs to make available those combinations, and also requests that the Commission effectively re-promulgate Rules 315(c)-(f) by requiring ILECs to provision UNEs in *any* technically feasible combination. These actions, consistent with the Act and the Supreme Court's decision, will ensure access to UNE combinations that will speed the development and increase the scope of local competition for voice and broadband services dramatically.

142 47 U.S.C. § 251(c)(3).

1. The Supreme Court's Reinstatement of Rule 315(b) Confirms the Commission's Authority to Require Cost-Based Access to ILEC UNE Combinations

Commission Rule 315(b) provides that:

> Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.[143]

The Supreme Court's reinstatement of Rule 315(b) now makes it clear that an ILEC must make available to competitors on a cost-based, unbundled basis combinations of UNEs used by the ILEC in provisioning services to its own carrier and end user customers.[144] As the Commission explained in its *Local Competition First Report and Order,* "incumbent LECs are required to perform the functions necessary to combine those elements that are ordinarily combined within their network, in the manner in which they are typically combined."[145] The Commission should reaffirm this conclusion here. Without such affirmation, it can be anticipated that ILECs will devise hyper-technical readings of the rule in an effort to end-run their newly reinstated obligation to provide combinations of network elements. For example, ILECs might argue that there are no "pre-existing" combinations for customers at new addresses. Similarly, ILECs could argue that there are no "pre-existing" combinations for customers switching from one CLEC to another. Neither of these interpretations of the rule, however, are consistent with congressional intent or the Commission's explanation of and justification for the

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143 47 C.F.R. § 51.315(b).

144 *AT&T,* 119 S.Ct., at 736-38.

145 *Local Competition First Report and Order,* ¶ 296.

rule. To guard against the discriminatory impact of such interpretations, ALTS requests that the Commission reject them explicitly and affirmatively declare that if an ILEC uses a combination of network elements anywhere in its network to provide service to any customer or carrier, then the ILEC must make available the same combination to requesting carriers for any service they intend to provide and for any customer they intend to serve.

2. The Commission Should Require ILECs to Make Available Any Technically Feasible Combination

The Supreme Court's categorical rejection of the Eighth Circuit's legal reasoning and statutory interpretation suggests that the Eighth Circuit not only erred in vacating Rule 315(b), but that it also erred in vacating the Commissions other combination rules. The Supreme Court, however, did not reinstate the Commissions rules pertaining to new combinations because those rules, Rules 315(c)-(f), were not before it on appeal. Since the Supreme Court's decision, the Commission and other parties have sought to address this open issue by petitioning the Eighth Circuit to reinstate or remand Rules 315(c)-(f).[146] The Eighth Circuit, however, has failed to act on these requests. Thus, consistent with the Supreme Court's affirmation that the Commission's interpretation of Section 251(c)'s combinations requirement, ALTS submits that the Commission should adopt a new rule requiring ILECs to provide UNEs in *any* technically feasible combination. Such a rule would ensure CLECs flexibility that may be essential to bringing competitive voice and data services to a broader base of customers.

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146 *See* Response of Federal Respondents to Local Exchange Carriers' Motion Regarding Further Proceedings On Remand And Motion For Voluntary Partial

3. The Commission Should Reaffirm that ILECs May Not In Any Way Restrict the Use of UNE Combinations

As discussed above with respect to ILEC efforts to restrict CLECs' use of the extended link UNE, the FCC must confirm that ILECs cannot place limits on use of combined UNEs. In its *Local Competition First Report and Order*, the Commission expressly made clear that UNEs are available to CLECs for the provision of *any* "telecommunications service."[147] This conclusion is in no way limited to CLECs' use of discrete UNEs. Rather, it extends to the use of combinations, as well. This conclusion is confirmed by the language of Commission Rule 309(a) which states that "[a]n incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, *unbundled network elements* that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends."[148]

Notably, ILEC restrictions on CLECs' use of combinations not only would run afoul of Section 251 and the Commission's rules and decisions implementing it, but such restrictions also would contravene the Commission's *Advanced Services Order* and the general advanced services mandate in Section 706. As the Commission found in its *Advanced Services Order*, the pro-competitive provisions of the Act, including Sections 251 and 706:

> [A]pply equally to advanced services and to circuit-switched voice services. Congress made clear that the 1996

Remand, filed by FCC and United States, *AT&T v. Iowa Utils. Bd.*, No. 96-3321 (and consolidated cases), Mar. 2, 1999 (8th Cir.).

147 *Id.*, ¶ 261 (citations omitted).

148 47 C.F.R. § 51.309(a) (emphasis added).

> Act is technologically neutral and is designed to ensure competition in all telecommunications markets.[149]

In light of this precedent, ALTS requests that the Commission act affirmatively and preemptively, by foreclosing restrictions on requesting carriers use of UNE combinations.

4. The Commission Should Explicitly Find that UNEs Need Not Be Combined at the Collocation Space of the Requesting Carrier

ALTS submits that the Commission explicitly should reaffirm its past findings that the connection or combination of network elements need not occur within the collocation space of the requesting carrier.[150] This affirmation will eliminate needless delay and litigation over the implementation of newly reinstated Rule 315(b). By making clear that requesting carriers need not bear the substantial cost and delay of collocating in every ILEC end office in order to effectively use UNE combinations, the Commission greatly will expand CLECs' addressable customer base and will reduce the time-to-market for competitive advanced services.

5. To Prevent Unnecessary Litigation, the Commission Should Begin to Identify Specific Combinations that Must Be Provisioned Under Rule 315(b)

Experience suggests that explicit Commission guidance is necessary if Rule 315(b) is to have its intended effect. Although the Commission reasonably cannot hope to address in advance all disputes that may arise as competitors seek to exercise their

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149 *Advanced Services Order*, ¶ 11.

150 *E.g., Application of BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in Louisiana,* CC Docket No. 98-121, *Memorandum Opinion and Order*, ¶¶ 164-70 (rel. Oct. 13, 1998).

rights under Rule 315(b), it nevertheless can address some of them. Above, ALTS already has identified potential disputes over which UNEs must be offered in combination. In order to preempt unnecessary litigation and delay, ALTS requests that the Commission explicitly identify several combinations that must be provided under Rule 315(b). Below, ALTS submits that a loop/multiplexing-aggregation-routing/transport combination, a transport/multiplexing-aggregation-routing/transport combination, and an intraMTE wiring/NID/loop or sub-loop combination explicitly should be identified as combinations that must be offered pursuant to Rule 315(b). ALTS' identification of these three combinations should in no way suggest that other combinations, or parts of the combinations suggested by ALTS, should not be offered pursuant to 315(b). Rather, ALTS intention merely is to expedite the effect of the Supreme Court's reinstatement of Rule 315(b), through Commission recognition of specific combinations that will help level the playing field for facilities-based competition with the ILECs.

a. Combinations of Loops, Multiplexing/Aggregation/Routing Devices, and Transport

As discussed above, ALTS submits that it is essential for competitors to obtain access to transport functionality comprised of a loop, multiplexing/aggregation/routing equipment, and transport. Whether the Commission provides competitors with access to this functionality by adding an extended link UNE to its national minimum list of unbundling standards, or by explicitly recognizing that the combination of loop, multiplexing/aggregation/routing equipment, and transport is one that must be provided

under Rule 315(b), should not make a difference, provided that competitors have a well defined right to the "extended link" functionality.

As noted above in ALTS' discussions of the extended link and local loop UNEs, access to the combined loop, multiplexing/aggregation/routing equipment, and transport functionalities is essential to competitors' ability to compete broadly in the markets for voice and data services. ILECs regularly employ such combinations to serve their own ISP and data service users. To compete on a level playing field, CLECs also must have access to such combinations at cost-based prices. Without such access, CLECs' voice and data service offerings severely would be limited, as the scope of addressable customers would be limited by their inability to collocate circuit and data switching equipment in every ILEC end office.

In assuring access to a loop, multiplexing/aggregation/routing equipment, and transport combination, it is particularly important for the Commission to address technical unbundling problems caused by the deployment of integrated aggregation equipment in loop and transport configurations. If aggregating equipment (DSLAM, DACS, MUX, DLC) is integrated into the loop, ILECs must be required to provide it as part of the loop UNE. Similar aggregation devices used in provisioning interoffice transport must be integrated into the transport UNE.

Finally, ALTS notes that in certain applications, the loop, multiplexing/aggregation/routing equipment, and transport combination will be derived in a way that resembles the "bitstream" approach proposed by ALTS and HAI in the

Advanced Services proceeding.[151] By providing a pre-defined bitstream (56 kbps, 64 kpbs, 1.544 mbps, 45 mbps, OC3, 12 or 48) running from customer premises to CLEC point of presence, this combination will be a critical component of CLEC advanced services and data offerings. Notably, this approach is technology neutral: ILECs can deliver a derived combination or bitstream over whatever facilities or network configuration it chooses, provided that functionality and quality are not adversely affected.

b. Combinations of Transport Between ILEC Offices with Transport Between ILEC Offices and CLEC Nodes

As set forth in ALTS' discussion of the interoffice transport UNE, the Commission has made it eminently clear that the ILECs obligation to provide unbundled transport includes an obligation to provide unbundled access to interoffice facilities between ILEC end offices and to interoffice facilities between ILEC and CLEC end offices. ALTS already has emphasized the need for affirmation of this conclusion. Now, ALTS submits that it is necessary for the Commission to identify that the combination of discrete transport segments and intervening multiplexing/aggregation/routing equipment is required under Rule 315(b). ILECs routinely combine discrete transport segments for themselves. Indeed, this is the only way that end office-to-tandem-to-end office connections are made. Yet, BellSouth, for example, has refused to provide CLECs with access to the same combined functionality at TELRIC-based rates. To curb this anticompetitive practice, ALTS submits that the Commission should explicitly find that

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151 *See generally* ALTS Comments, CC Docket No. 98-147 at Attachment: "Economics of Promoting Broadband Deployment" by HAI Consulting, Inc.

transport/multiplexing-aggregation-routing/transport combinations are required under Rule 315(b).

c. Combinations of Loops or Subloop Components with IntraMTE wiring

Above, ALTS set forth the need for the Commission to establish intraMTE wiring as a discrete UNE. Access to the "last hundred feet" controlled by the ILEC may be enough for some UNE entry strategies, but not for others. Thus, ALTS requests that the Commission explicitly find that, under Rule 315(b), ILECs are required to make available UNE combinations consisting of intraMTE wiring, the NID, and the loop or sub-loop elements, including distribution cable and remotely deployed electronics. ILECs clearly deploy such combinations in their own provisioning of services to end users. To compete on a level playing field, facilities-cased competitors must have cost-based access to the same combinations. To ensure such access, the Commission affirmatively should find that cost-based access to UNE combinations consisting of intraMTE wiring, the NID, and the loop or sub-loop elements, including distribution cable and remotely deployed electronics, is required under Rule 315(b).

V. THE COMMISSION SHOULD ESTABLISH MINIMUM PRICING STANDARDS APPLICABLE TO UNEs TO ENSURE REASONABLE AND NONDISCRIMINATORY RATES AND CHARGES

In the *Local Competition First Report and Order*, the Commission found that state regulators must apply the Commission's TELRIC standard in establishing rates for

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(filed Sept. 25, 1998).

UNEs. In *AT&T v. Iowa Utilities Board,* the Supreme Court overturned the Eighth Circuit's stay of the Commission's pricing rules:

> Respondents contend that the Commission's TELRIC rule is invalid because § 252(c)(2) entrusts the task of establishing rates to the state commissions. We think this attributes to that task a greater degree of autonomy than the phrase 'establish any rates' necessarily implies. The FCC's prescription, through rulemaking, of a requisite pricing methodology no more prevents the States from establishing rates than do the statutory 'Pricing standards' set forth in § 252(d). It is the States that will apply those standards and implement that methodology, determining the concrete result in particular circumstances. That is enough to constitute the establishment of rates.[152]

In so stating, the Supreme Court unequivocally established the Commission's jurisdiction to set national pricing standards for state regulators to apply in setting the rates for UNEs. Earlier in these comments, ALTS listed the compelling policy reasons for establishing uniform, national standards for UNEs – the need to avoid unnecessary litigation, the need to avoid technical and service "Balkanization" and to promote uniform access to advanced services across the country, and the need to provide regulatory certainty that will allow CLECs to develop business plans and attract investment with confidence. All of these considerations also compel the establishment of uniform, national pricing rules for UNEs. ALTS proposes several specific pricing rules in the following sections.

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152 *AT&T,* 119 S.Ct. at 732.

A. The Commission Should Find that Major Disparities In An ILEC's Rates for the Same UNEs In Different States – and Major Disparities in the Rates of Different ILECs for the Same UNEs – Are Presumptively Unreasonable

In the two and one-half years during which the Eighth Circuit Court of Appeals stayed the Commission's UNE pricing rules, most state regulators established final or interim rates for all of the major UNEs. Although these state regulators conscientiously expended enormous amounts of resources at this task, these efforts have not all yielded reasonable rates for UNEs. Specifically, in many cases, enormous disparities currently exist in rates for the same UNEs provided by the same ILECs in different states, and between functionally identical UNEs provided by the same ILEC in the same state. For an example of substantial disparities in the same UNE from one ILEC state to another: in Mississippi, a 2-wire ADSL-compatible loop costs $14.83; the same loop in South Carolina costs $20.81. In some cases, UNEs are priced at the same level in different ILEC states (4-wire analog loops at $30.00 apiece in Alabama and Florida) while other UNEs in the same states show wide pricing disparities (4-wire HDSL loops at $14.30 in Alabama and at $18.24 in Florida).[153] ALTS posits that the costs of BellSouth's networks among the various states in its service area cannot justify such incredible disparities in rates from state to state. Moreover, even if significant cost differences could be identified between states – and ALTS contends that none can be – such cost differences could not justify the disparate rate structures found in the different states.

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153 BellSouth-e.spire Interconnection Agreement, Fourth Amendment, Exhibit 1 (April 15, 1999).

Similar disparities are found between rates for the same UNEs provided by different ILECs. For example, in Illinois, the price of an Ameritech 2-wire ISDN loop in Rate Zone 1 is $2.71. In New York, the price of a Bell Atlantic 2-wire ISDN loop in Rate Zone 1 is $24.27 – a rate disparity of 900 percent. While network costs may legitimately vary from ILEC to ILEC, if Bell Atlantic's network costs were really nine times higher that Ameritech's we would expect to see differentials of 900 percent between the carriers' Special Access rates. No such disparities exist, however.

Now that the Commission has unquestionable authority to establish pricing standards for application by state regulators, it cannot allow these highly anticompetitive rate disparities to continue. ALTS asks the Commission to create a threshold test requiring that a state commission review the UNE rates for an ILEC's UNEs if those rates exceed the rates for the same ILEC's UNEs in a neighboring state by more than 25 percent. Similarly, a state commission should be required to review an ILEC's UNE rates if those rates exceed the rates of another ILEC for the same or comparable UNE by more than 100 percent. The outcomes of such state commission reviews should themselves be reviewable by the Commission to determine whether the TELRIC pricing standards have been applied correctly.

B. The Commission Should Require that ILECs Make UNEs Available At Volume and Term Discounts

Currently, despite repeated requests by CLECs, ILECs refuse to make UNEs available at discounts that reflect the cost savings associated with large volume purchases and multi-year term commitments. The ILECs maintain this position despite that, by the ILECs' own admissions, (1) CLECs are purchasing UNEs in increasing volumes, and (2)

CLECs do not use UNEs on a month-to-month basis, but typically deploy a UNE for extended periods of time. This practice also ignores the fact that ILECs recognize significant cost savings in provisioning such UNE orders: (1) large volume orders allow ILECs to realize economies of scale in processing orders and provisioning UNEs; (2) long-term commitments reduce turnover, which allows ILECs to avoid significant carrier contact, order processing, and provisioning costs, and allows them to make more efficient – and economic – use of their networks.

The magnitude of the ILEC cost savings that accrue from large volume and long term orders are suggested in the ILECs' tariffed rates for retail services. In its review of the Tier 1 ILEC's 1993 annual access filings, the Commission noted comments by a CLEC that the ILECs included rates for their DS3 Special Access services that provided combined volume and term discounts of as much as 73 percent below month-to-month rates for single circuits.[154] The Commission rejected complaints against the magnitude of these discounts, finding that they fell within the Price Cap rules, and so were accorded a presumption of reasonableness.[155] A summary review of current ILEC tariffed rates indicates that these very high levels of discounts are still common. For example, SBC offers electrical DS3 service at increasing volume discounts for up to 14 DS3s, and at increasing term discounts for terms up to 10 years. A single DS3 taken on a one-year basis costs $4,269. Fourteen DS3s taken for a 10-year term cost $11, 503. The per-DS3

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154 *1993 Annual Access Tariff Filings*, 8 FCC Rcd 4960, 4969 (1993) (citing a filing by MFS calculating maximum DS3 discounts of 67 percent for GTE, 69 percent for Bell Atlantic and 73 percent for BellSouth).

155 *Id.*

price at these volume and term discounted rates is $821 per DS3 – a discount of over 80 percent below the one-year, one-circuit rate.[156]

The presence of such dramatic discounts for Special Access and SONET services presents a prima facie case that ILECs also realize significant cost savings when providing UNEs in large volumes and for long-term commitments. The failure to pass these cost savings along to the CLECs purchasing the UNEs undermines the mandate of Section 252(d)(1) that rates for UNEs must be "just and reasonable" and "based on . . . cost," and violates the Commission's TELRIC pricing rules.

The ILECs' refusal to extend volume and term discounts to CLEC purchases of UNEs raises another concern as well. In 1994, the Commission concluded an informal inquiry into the volume and term discounted rate structures for Special Access services tariffed by four ILECs. The Commission rejected arguments by ALTS and several CLECs that these discounts were excessive, finding that "we are not persuaded that LEC offerings are priced below their average variable costs."[157] That 1994 Order was the last – and to ALTS' knowledge, the only – statement made by the Commission on the cost basis of the ILEC discounted rate structures. The fact that the Commission adopted an average variable cost ("AVC") standard in analyzing the ILEC discounted rates is highly disturbing, however, because this standard is inconsistent with the TELRIC standard that the Commission has required for the establishment of UNEs. Specifically, the AVC cost standard by definition excludes many of the joint and common network costs that are

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156 Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, § 20.6.1(B)(6)(c)(1) *with* § 20.6.1(B)(6)(c)(10). Even greater discounts are available if a carrier purchases more than 14 DS3s.

157 *Expanded Interconnection with Local Telephone Company Facilities,* 9 FCC Rcd 5154, 5201 (1994).

included in the TELRIC costing standard. If ILECs are allowed to set their high-capacity Special Access and SONET service rates at AVC, and CLECs are forced to purchase UNEs that reflect higher TELRIC costs in order to compete against such services, this could result in a classic price squeeze. There are only two ways the Commission can avoid such a patently anticompetitive outcome: either conduct a rate case to determine that all ILEC volume and term discounted rates are set above TELRIC levels, or mandate that ILECs pass the same level of costs savings reflected in their discounted retail services to the CLECs that purchase UNEs.

C. The Commission Must Enforce Its Rules Requiring Geographic Deaveraging of Loop Rates

ALTS respects the Commission's recent decision to stay its rules requiring the geographic deaveraging of UNEs until six months after the Commission releases an order finalizing high-cost universal service support in CC Docket No. 96-45.[158] Indeed, ALTS commends the Commission's decision in its *Stay Order* to reiterate the sound policy and economic rationale for the ultimate deaveraging of UNE rates, and its commitment to achieve such deaveraging by a time certain.

It is, however, necessary for the Commission to take one final step to ensure the timely availability of deaveraged UNE rates. ALTS submits that the Commission should establish a proxy rule to take effect at the time designated by the Commission in case a state regulatory body is unable to establish deaveraged rates. Specifically, ALTS requests that the Commission rule that, if a state commission does not establish final or

158 *Implementation of Local Competition Provisions of the Telecommunications Act of 1996; Deaveraged Rate Zones for Unbundled Network Elements*, CC Docket No. 96-98, FCC 99-86 (rel. May 7, 1999) ("*Stay Order*").

interim deaveraged rates for UNEs within six months after the release of the *Universal Service* order, a federal proxy rate will automatically apply. That proxy rate should be the largest density zone discount reflected in ILEC federal tariffs (for either Switched or Special Access services) as of May 7, 1999 – the date of the *Stay Order*. This proxy rate will remain in effect – subject to true-up retroactive to May 7, 1999 – until the state regulatory body establishes final deaveraged rates. Such action is fully consistent with the Commission's authority to establish pricing guidelines, as recently defined by the Supreme Court, and with Section 252(d)(1) of the Communications Act, which requires UNE rates to be "just and reasonable" and based on "cost." It also ensures that state commissions that may not have the resources to complete a full rate case within the time set by the Commission will nevertheless be able to establish the geographically deaveraged rates that will be required when the stay of Rule 51.507(f) is lifted.

D. The Commission Must Clarify that ILECs May Not Impose "Glue" Charges – Either As Recurring Rates or As Nonrecurring Charges

As ALTS has discussed earlier in these comments, recent CLEC experience has shown that ILECs have attempted to manipulate UNEs – and the functions necessary to obtain access to UNEs, such as combining discrete UNEs or performing cross-connects to loops and transport – in a cynical attempt to impose "glue" charges that serve no purpose other than to raise the cost of interconnection. The Commission itself noted BellSouth's attempt to establish glue charges as part of the virtual collocation process when rejecting BellSouth's petition for interLATA relief in South Carolina.[159]

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159 *Application of BellSouth Corporation, et. al, Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In South Carolina*, 13 FCC Rcd 539, 655 (1997).

Such charges by definition do not meet the standards for forward-looking incremental cost established by the Commission in the *Local Competition First Report and Order*, and fail to comply with the pricing mandate of Section 251(d)(1) of the Act. As a result, the Commission should clarify that state regulators may not establish costs for UNEs, for effecting the combination of UNEs, or for providing access to UNEs that do not meet the costing requirements of the Act and of the Commission's rules.

E. The Commission Must Establish Pricing Standards for Digitally Conditioned Loops

Earlier in these comments, ALTS demonstrated the need for the Commission to require the unbundling of "clean copper" loops, and to ensure the provision of digitally conditioned loops to CLECs. ALTS also explained that, in addition to defining the UNEs, it is critical that the Commission establish pricing rules that will ensure compliance with the Communications Act and the Commission's TELRIC standards. Now, the Commission must clarify the appropriate pricing treatment of "conditioning" a line to make it DSL-compatible (that is, removing load coils and minimizing bridged taps, if necessary). The Commission should establish a presumption against the imposition of charges on CLECs for such conditioning, either as recurring or nonrecurring charges. Under the Commission's TELRIC pricing standards, ILEC loop rates must be set on a forward-looking basis, assuming the deployment of the most efficient available technologies. The assumption that analog circuits will be deployed simply has no place in a forward looking cost study – particularly in light of the ILECs' highly publicized introduction of ADSL-based retail services. These services, of course, require conditioned lines, and support a presumption that all loops in a forward looking

cost study will be conditioned. The Commission should therefore require that loop conditioning costs be excluded from TELRIC-based loop rates.

In the alternative, if the Commission finds that ILECs may include conditioning costs in loop rates – and ALTS reiterates that such practice is inconsistent with a TELRIC costing methodology – the Commission should, at a minimum, find that ILECs may only recover such costs through *nonrecurring* charges, and that conditioning cannot be used as an excuse to inflate the monthly recurring charge of the loop. Such practice is consistent with long-established pricing principles. These costs are appropriately recovered through nonrecurring rates, because line conditioning is a one-time effort that incurs nonrecurring labor costs.

Similarly, the Commission must find that an ILEC may not impose a line conditioning nonrecurring charge on CLECs if it does not impose a similar charge on its own retail customers. The "wholesale" ADSL service offering recently filed by Bell Atlantic[160] is instructive on this point. Bell Atlantic does not provide any cost data with the publicly filed tariff transmittal. However, its redacted cost materials do show the cost *categories* that are used to derive the nonrecurring charges associated with the service. These cost categories include the labor of central office technicians and cross-connect frame attendants, and revisions to OSS databases. The categories do not make any provision for upgrades to outside plant.[161] Bell Atlantic's filing therefore indicates that Bell Atlantic is not charging its retail customer a nonrecurring charge for line conditioning. Consequently, Bell Atlantic – and similarly situated ILECs – should be

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160 Bell Atlantic Tariff F.C.C. No. 1, Transmittal No. 1138, filed May 19, 1999.

161 *Id.*, § 5, Work Paper 2.

disallowed from imposing a line conditioning charge on CLECs ordering clean copper loops or DSL-equipped loops, as such charges would be discriminatory.

Finally, the Commission should find that rates for 2- and 4-wire conditioned copper loops should be set at levels below 2- and 4-wire analog loops. This reflects the fact that digitally conditioned loops require less maintenance over the long run, and so should be priced a lower levels than analog loops. This pricing structure is reflected in the analog and DSL-capable loop rates established by BellSouth in Alabama: 2-wire analog loop = $19.04; 2-wire ADSL loop = $15.11; 2-wire HDSL loop = $14.39. Digital loops are similarly priced lower than analog loops in all BellSouth states in which ADSL- and HDSL-capable loop rates have been established.[162]

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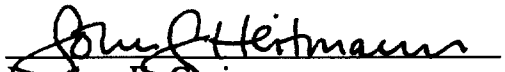
162 BellSouth-e.spire Interconnection Agreement, Fourth Amendment, Exhibit 1 (April 15, 1999).

Conclusion

For all the foregoing reasons, the Commission should act promptly to reinstate minimum national unbundling requirements based on an interpretation of the Section 252(d)(2) "necessary" and "impair" standards that will promote the 1996 Act's goal of widespread facilities-based competition.

Respectfully submitted,

THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

By: 

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May 26, 1999

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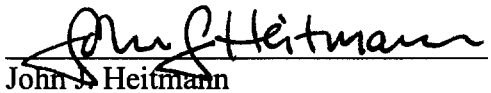
I, John Heitmann, hereby certify that copies of the foregoing Comments of the Association for Local Telecommunications Services were served on May 26, 1999 by messenger on the following persons.



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